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**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

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**Proposed Rule**  
LSA Document #07-468**DIGEST**

Adds [329 IAC 9-1-10.7](#), [329 IAC 9-1-15.5](#), [329 IAC 9-1-19.5](#), [329 IAC 9-1-38.5](#), [329 IAC 9-1-38.7](#), [329 IAC 9-1-38.9](#), and [329 IAC 9-4.5](#) concerning delivery prohibition of regulated substance at underground storage tanks as mandated by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005. Repeals [329 IAC 9-1-38.2](#) and [329 IAC 9-1-38.3](#). Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: August 8, 2007, Indiana Register (DIN: [20070808-IR-329070468FNA](#)).

Second Notice of Comment Period: December 12, 2007, Indiana Register (DIN: [20071212-IR-329070468SNA](#)).

Notice of First Hearing: December 12, 2007, Indiana Register (DIN: [20071212-IR-329070468PHA](#)).

Date of First Hearing: March 18, 2008.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#) until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on December 12, 2007, at DIN: [20071212-IR-329070468SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

IDEM requested public comment from December 12, 2007, through January 11, 2008, on IDEM's draft rule language. No comments were received during the second comment period.

**SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On March 18, 2008, the Solid Waste Management Board (board) conducted the first public hearing/board meeting concerning the new rules for the delivery prohibition at underground storage tanks mandated by the underground storage tank compliance act, part of the federal Energy Act of 2005. No comments were made at the first hearing.

[329 IAC 9-1-10.7](#); [329 IAC 9-1-15.5](#); [329 IAC 9-1-19.5](#); [329 IAC 9-1-38.2](#); [329 IAC 9-1-38.3](#); [329 IAC 9-1-38.5](#); [329 IAC 9-1-38.7](#); [329 IAC 9-1-38.9](#); [329 IAC 9-4.5](#)

SECTION 1. [329 IAC 9-1-10.7](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-10.7](#) "Chronic failure to comply" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23](#)

Sec. 10.7. "Chronic failure to comply" means a person that has not complied with [329 IAC 9-2-1](#), [329 IAC 9-2.1](#) or either of the following occur:

- (1) A liquid release of a regulated substance from an underground storage tank system, which may include the failure of any required overfill protection system, where the failure is causing a release to the environment, or the failure of a required spill containment structure, where the failure is causing a release to the environment due to a spill or an overfill.
- (2) The inability of an underground storage tank system to detect a liquid leak or contain a liquid release of a regulated substance in the manner required by [329 IAC 9-7](#), which may include the tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.

(Solid Waste Management Board; [329 IAC 9-1-10.7](#))

SECTION 2. [329 IAC 9-1-15.5](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-15.5](#) "Deposit" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23](#)

**Sec. 15.5. "Deposit" means the act of placing in or filling of an underground storage tank with a regulated substance.**

(Solid Waste Management Board; [329 IAC 9-1-15.5](#))

SECTION 3. [329 IAC 9-1-19.5](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-19.5](#) "Failure to comply" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23](#)

**Sec. 19.5. "Failure to comply" means the failure of an owner or operator to manage or operate an underground storage tank system in accordance with [329 IAC 9-3.1](#) and [329 IAC 9-7](#).**

(Solid Waste Management Board; [329 IAC 9-1-19.5](#))

SECTION 4. [329 IAC 9-1-38.5](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-38.5](#) "Red tag" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23](#)

**Sec. 38.5. "Red tag" means the device, such as a tamper-resistant strap, fill pipe bag, or any combination thereof, that identifies an underground storage tank system as ineligible to receive a regulated substance or the act of applying such device.**

(Solid Waste Management Board; [329 IAC 9-1-38.5](#))

SECTION 5. [329 IAC 9-1-38.7](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-38.7](#) "Regulated substance" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

Affected: [IC 13-11-2-183](#); [IC 13-23](#)

**Sec. 38.7. "Regulated substance" has the meaning set forth in [IC 13-11-2-183](#).**

(Solid Waste Management Board; [329 IAC 9-1-38.7](#))

SECTION 6. [329 IAC 9-1-38.9](#) IS ADDED TO READ AS FOLLOWS:

**[329 IAC 9-1-38.9](#) "Release" defined**

Authority: [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

Affected: [IC 13-11-2-184](#); [IC 13-23](#)

**Sec. 38.9. "Release" has the meaning set forth in [IC 13-11-2-184\(a\)](#).**

(Solid Waste Management Board; [329 IAC 9-1-38.9](#))

SECTION 7. [329 IAC 9-4.5](#) IS ADDED TO READ AS FOLLOWS:

**Rule 4.5. Fuel Delivery Prohibition**

**[329 IAC 9-4.5-1](#) Affixing red tags**

**Authority:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

**Affected:** [IC 13-13-1-1](#); [IC 13-23-12-1](#)

**Sec. 1. (a)** Upon the agency's discovery of a chronic failure to comply and prior to affixing a red tag, the agency must notify the owner, operator, or employee on site in writing of the agency's discovery of a chronic failure to comply.

**(b)** After the owner, operator, or employee on site receives the written notification required in subsection (a), the red tag will be attached to the fill pipe of the noncompliant underground storage tank system so that the tag is visible to any person attempting to deliver a regulated substance to the underground storage tank.

**(c)** Upon the discovery by the agency of an owner or operator that has a failure to comply, the agency may issue a violation letter to the owner and operator identifying the specific rule requirements that were not complied with in this article.

**(d)** If the owner or operator fails to correct the specific compliance failure within the time stipulated in the violation letter, the agency may affix a red tag to the fill pipe of the noncompliant underground storage tank system so that the tag is visible to any person attempting to deliver a regulated substance to the underground storage tank.

**(e)** The owner or operator may continue to dispense from the noncompliant underground storage tank until the underground storage tank is empty.

**(f)** The owner or operator of a facility shall:

- (1)** not deposit or allow the deposit of a regulated substance into an underground storage tank that has a red tag affixed to the tank's fill pipe; and
- (2)** immediately notify their fuel delivery transporter of the red tag status.

**(g)** No person shall do the following:

- (1)** Deposit a regulated substance into an underground storage tank that has a red tag affixed to the tank's fill pipe.
- (2)** Remove, deface, alter, or otherwise tamper with a red tag so that the information obtained on the tag is not legible.

**(h)** A red tagged underground storage tank system may not be out of compliance for more than six (6) consecutive months. After this time, the underground storage tank system must be closed under [329 IAC 9-6](#).

**(i)** The underground storage tank annual registration fee, as required by [IC 13-23-12-1](#), must be paid on any tank that has a red tag.

(Solid Waste Management Board; [329 IAC 9-4.5-1](#))

**[329 IAC 9-4.5-2](#) Removing red tags**

**Authority:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

Affected: [IC 13-13-1-1](#); [IC 13-23](#)

**Sec. 2. (a)** Upon notification by the owner or operator documenting to the satisfaction of the agency that the compliance failure has been corrected, the agency may provide written authorization to the owner or operator to remove the red tag. The agency shall do the following:

- (1) Inspect the underground storage tank system within five (5) business days of the notification to validate the documentation submitted by the owner or operator.
- (2) Upon validation of the submitted documentation, the agency shall immediately remove the tag if the red tag was not already removed by the owner or operator under this subsection.

**(b)** A red tag that has been removed by the owner or operator shall be returned to the agency within five (5) business days.

*(Solid Waste Management Board; [329 IAC 9-4.5-2](#))*

#### **[329 IAC 9-4.5-3](#) Notice of correction of a failure to comply**

**Authority:** [IC 4-21-5-3-4](#); [IC 4-21.5-3-7](#); [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

**Affected:** [IC 13-13-1-1](#); [IC 13-23](#)

**Sec. 3.** Upon confirmation that a compliance failure has been corrected, the agency shall notify the owner or operator in writing by certified mail of the confirmation.

*(Solid Waste Management Board; [329 IAC 9-4.5-3](#))*

#### **[329 IAC 9-4.5-4](#) Appeals**

**Authority:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-23-1-1](#); [IC 13-23-1-2](#); 42 U.S.C. 6991

**Affected:** [IC 4-21.5-3-4](#); [IC 4-21.5-3-7](#); [IC 13-13-1-1](#); [IC 13-23](#)

**Sec. 4.** A red tag affixed under this rule may be appealed within fifteen (15) days of receipt of written notification in accordance with [IC 4-21.5-3-4\(a\)\(6\)\(B\)](#) and [IC 4-21.5-3-7](#).

*(Solid Waste Management Board; [329 IAC 9-4.5-4](#))*

SECTION 8. THE FOLLOWING ARE REPEALED: [329 IAC 9-1-38.2](#); [329 IAC 9-1-38.3](#).

#### **[Notice of Public Hearing](#)**

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